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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/614,323	07/07/2003	Edward Anthony Bezek	CFLAY.00199	7359
22858	7590	04/07/2005		
CARSTENS YEE & CAHOON, LLP			EXAMINER	
P O BOX 802334			MEREK, JOSEPH C	
DALLAS, TX 75380			ART UNIT	PAPER NUMBER
			3727	

DATE MAILED: 04/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/614,323	BEZEK, EDWARD ANTHONY	
	<b>Examiner</b> Joseph C. Merek	<b>Art Unit</b> 3727	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM  
 THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on 7/7/03.
- 2a) This action is FINAL.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) 3,8,11,12,15,16 and 26 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1,2,4-7,9,10,13,14 and 17-25 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|   | 6) <input type="checkbox"/> Other: _____                                    |

**DETAILED ACTION**

***Election/Restrictions***

This application contains claims directed to the following patentably distinct species of the claimed invention: Group A, Fig. 3;

Group B, Figs. 4a-b;

Group C, Fig. 6a-d;

Group D, 7a-c, 8a-c;

Group E, Fig. 11b.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claim 1 and 13 are generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

During a telephone conversation with Jeff Dagenfelter on 4/1/05 a provisional election was made without traverse to prosecute the invention of Group D, claims 1, 2, 4-7, 9, 10, 13, 14, and 17-25. Affirmation of this election must be made by applicant in replying to this Office action. Claims 3, 8, 11, 12, 15, 16, 21, and 26 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 4, 6, 13, 14, 17, 19, and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Kawaguchi et al (US 4,615,928). Regarding claim 1, 2, and 4, see Figs. 17-20 and Col. 15 lines 46-51. There are lateral hinges at the top and the bottom

of panel 202n. The panels indent as specified in col. 15. The weakened panel is 202n since it is thinner. The panel 202n is curved as seen in Fig. 19. Regarding claim 6, there are four of the panels around the container equally spaced. Regarding claim 13, the process limitations do not require any structure that is not in the reference. Regarding claim 14, there are lateral hinges at the top and the bottom of panel 202n. Regarding claim 17, where the panel 202n is curved as seen in see Fig. 19. Regarding claim 19, the upper and lower have a generally circular cross-section and the middle has a generally oval cross-section as seen in Fig. 19. The term generally is a very broad term and allows for a large amount of variation from circular of oval. Regarding claim 21, there are four panels on the container.

Claims 1, 2, 4-7, 13, 14, 17, 18-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Shimada et al (US 2001/002291). Regarding claim 1, see Figs. 1-5 where the claimed structure is shown. The panel 8a is the flowing geometries mechanism. The container is capable of being hermetically sealed. Regarding claim 2, the lateral hinges are the top edge 10) and the bottom edge (12) of panel 8a. The panel is considered weakened since it is deformed inward in response to pressure. Regarding claim 4, the cross section of the panel is curved as seen in Fig. 2. Regarding claim 5, see Fig. 1, where the parallel grooves are 16 which are perpendicular at their center to the axis. The definition of parallel allows for cured lines or arcs as seen in the reference. Regarding claim 6, there is one on either side of the body. Regarding claim 7, the structural rigidity member can be either 16 or 17. Regarding claim 13, the blow-molded does not require any structure that is not in the reference. Regarding claim 14,

the lateral hinges are the top edge 10) and the bottom edge (12) of panel 8a. The panel is considered weakened since it is deformed inward in response to pressure.

Regarding claim 17, see Fig. 2 where panel 8a is curved in lateral section. Regarding claim 18, see Fig. 1, where the grooves 16 are parallel and the center is perpendicular to the axis. Regarding claim 19, see Fig. 2, where the upper and lower cross-sections are generally circular since they are rounded and the term "generally" allows for a large amount of variation from exactly circular. The center is generally oval as seen in the same figure. Regarding claim 20, the hinges make the transition from the oval to the circular and will flex to some degree since they are plastic. Regarding claim 21, there are two panels on the container, which are equally spaced around the annular periphery.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 9, 10, and 22-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shimada et al (US 2001/002291A1). Regarding claims 9, 10, and 22-25, Shimada et al does not teach the claimed annular corrugations. Zimmer et al (US D 404,311), as seen in Fig. 1, teaches a similar container where the upper and lower sections have an annular corrugated pattern thereon. It would have been obvious to employ the corrugations of Zimmer et al in the bottle of Shimada et al to strengthen

the upper and lower sections and to make the bottle more visually appealing. At some point along the bottle the pattern is perpendicular to the axis of the bottle.

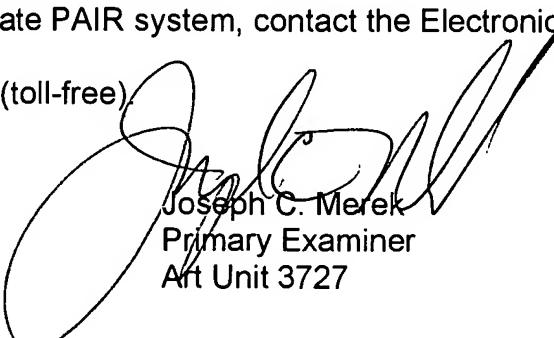
***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Conrad (US 4,946,053) is cited for its structure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph C. Merek whose telephone number is 571 272-4542. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young can be reached on (571) 272-4549. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Joseph C. Merek  
Primary Examiner  
Art Unit 3727